



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 17 2016

CERTIFIED MAIL 7014 2870 0000 3318 2923  
RETURN RECEIPT REQUESTED

Mr. John M. Miles, Esq.  
511 South Third Street  
P.O. Box 8  
Union City, Tennessee 38281

Re: Administrative Compliance Order on Consent, No. CWA 04-2016-4771  
Andrew H. Holt d/b/a A & E Livestock  
Dresden, Weakley County, Tennessee

Dear Mr. Miles:

Enclosed, please find an executed copy of the Administrative Compliance Order on Consent (AOC), Docket No.: CWA-04-2016-4771, pertaining to the above referenced facility. Please take note of Paragraphs 54-60 of the AOC, which require certain actions and submittals from your client, Mr. Holt.

The EPA appreciates your cooperation in this matter. If you have any questions concerning the enclosed AOC, please contact Ms. Suzanne Armor, Associate Regional Counsel, at (404) 562-9701 or via email at armor.suzanne@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division

Enclosure

cc: Ms. Tisha Calabrese Benton, Director  
Tennessee Department of Environment and Conservation

#1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 17 2016

CERTIFIED MAIL 7014 2870 0000 3318 2930  
RETURN RECEIPT REQUESTED

Ms. Tisha Calabrese-Benton, Director  
Division of Water Resources  
Tennessee Department of Environment  
and Conservation  
312 Rosa L. Parks Avenue  
William R. Snodgrass Tennessee Tower  
Nashville, Tennessee 37243

Re: Administrative Compliance Order on Consent No. CWA 04-2016-4771  
Andrew H. Holt d/b/a A & E Livestock  
Dresden, Weakley County, Tennessee

Dear Ms. Calabrese-Benton:

Pursuant to Sections 308 and 309(a) of the Clean Water Act (CWA), 33 U.S.C. §§ 1318 and 1319(a), I have determined that the above referenced facility is in violation of Section 301 of the CWA, 33 U.S.C. § 1311. As a result, I have issued an Administrative Compliance Order on Consent (AOC), a copy of which is enclosed for your reference. The AOC is presently being served.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Giattina".

James D. Giattina  
Director  
Water Protection Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	<b>ADMINISTRATIVE COMPLIANCE</b>
	)	<b>ORDER ON CONSENT</b>
<b>ANDREW H. HOLT,</b>	)	
<b>d/b/a A &amp; E LIVESTOCK,</b>	)	
<b>DRESDEN, TENNESSEE</b>	)	
	)	
<b>RESPONDENTS.</b>	)	<b>DOCKET NO. CWA-04-2016-4771</b>
	)	
	)	

---

**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Protection Division of the EPA, Region 4.

**II. Findings of Fact and Determinations of Law**

For purposes of this AOC, Respondents admit the jurisdictional allegations, but neither admit nor deny the factual allegations, set out below. The EPA asserts that the following facts are true and substantiated:

1. Andrew H. Holt is an individual and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

2. Andrew H. Holt, doing business as A & E Livestock, is a general partnership and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3. The term "Respondents," as used herein, refers both to Mr. Holt in his individual capacity and to Mr. Holt d/b/a A & E Livestock.

4. At times relevant to this action, Respondents owned and/or operated a concentrated animal feeding operation (“CAFO”), as defined at 40 C.F.R. § 122.23(b)(2), located at 357 Woodruff Road, Weakley County, Dresden, Tennessee 38225 (“Facility”).

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation’s waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Pursuant to Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12), a “discharge of a pollutant” means any addition of any pollutant to navigable waters from a point source.

7. The term “pollutant” means, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

8. The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

9. A “concentrated animal feeding operation” or “CAFO” means an animal feeding operation that is defined as a Large CAFO or as a Medium CAFO. 40 C.F.R. § 122.23(b)(2).

10. An “animal feeding operation” means a lot or facility (other than an aquatic animal production facility) where: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1).

11. A “Medium CAFO” includes any animal feeding operation with: (i) 750 to 2,499 swine each weighing 55 pounds or more; and (ii) where pollutants are either discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. 40 C.F.R. § 122.23(b)(6).

12. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits

allowing for the discharge of pollutants, including agricultural waste, into navigable waters subject to specific terms and conditions.

13. The EPA has granted the State of Tennessee, through the Department of Environment and Conservation (TDEC), approval to issue NPDES permits pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

14. Section 402(a) of the CWA, 33 U.S.C. § 1342, sets forth requirements for the issuance of NPDES permits for the discharge of pollutants. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), requires, in part, that a discharge of pollutants to navigable waters must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

15. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the EPA promulgated regulations setting forth the NPDES permit requirements for CAFOs at 40 Code of Federal Regulation (C.F.R.) Parts 122 and 412 (known as the "Consolidated CAFO Regulations").

16. The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural stormwater discharge. 40 C.F.R. § 122.23(e).

17. 40 C.F.R. § 122.23(d)(1) prohibits discharge by a CAFO unless the discharge is authorized by an NPDES Permit.

18. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits or other animal feeding operations facilities; direct contact swimming, washing, or spray cooling of animals; or dust control; as well as any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding. 40 C.F.R. § 122.23(b)(8).

19. TDEC issued a General NPDES Permit for Concentrated Animal Feeding Operations, Permit No. TNA000164 ("2004 CAFO General Permit"), in accordance with the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. 69-3-101 et seq., and the CWA, which was effective on August 7, 2004 and expired on August 5, 2009.

20. To obtain coverage under the 2004 CAFO General Permit, an applicant was required to submit a Notice of Intent (NOI) along with a closure/rehabilitation plan for any waste storage structures at the facility and either a comprehensive or site-specific NMP to the Tennessee Department of Agriculture (TDA). Following review by the TDA, the NOI would be forwarded to TDEC.

21. In relevant part, the 2004 CAFO General Permit prohibited all wastewater discharges from a CAFO to waters of the State of Tennessee, except when either chronic or catastrophic rainfall events caused an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain: (i) all process wastewater resulting from the operation of the CAFO, plus; (ii) all runoff from a 25-year, 24-hour rainfall event for an existing CAFO. See Part II of 2004 CAFO General Permit.

22. Pursuant to correspondence from TDEC dated January 13, 2010, permittees may have maintained coverage under the expired 2004 CAFO General Permit by re-submitting a completed NOI within 30 days of the effective date of new General Permit.

23. TDEC issued a State Operating Permit for Class II Concentrated Animal Feeding Operations, Permit No. SOPCD0000 ("2010 CAFO General Permit"), in accordance with the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. 69-3-108, which was effective on November 1, 2010 and expired on October 31, 2015.

24. To obtain coverage under the 2010 CAFO General Permit, an applicant was required to submit a Notice of Intent (NOI), a closure/rehabilitation plan for any waste storage structures at the facility, and a site-specific nutrient management plan ("NMP") that meets the requirements of TDEC Rule 1200-4-5-.14 to both TDA and TDEC. The application would be reviewed by TDA and, upon approval, TDA would notify TDEC.

25. In relevant part, the 2010 CAFO General Permit prohibited all wastewater discharges from a CAFO to waters of the State of Tennessee, except when either chronic or catastrophic rainfall events caused an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain: (i) all process wastewater resulting from the operation of the CAFO, plus; (ii) all runoff from a 25-year, 24-hour rainfall event for an existing CAFO. See Part II of 2004 CAFO General Permit.

26. Part 1.6.4 of the 2010 CAFO Permit and Tenn. Comp. R. and Regs. 0400-40-05-.14(6)(b)(1) require that CAFOs shall have in place a closure/rehabilitation plan that meets or exceeds U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) standards, addresses maintenance of the Facility until proper closure can be completed, and includes a proposed schedule for closure not to exceed 360 days.

27. Part 4.13 of the 2010 CAFO Permit requires that CAFOs must fully implement their closure/rehabilitation plans within twelve (12) months of ceasing operation; that all earthen basins must be closed if the CAFO ceases operation; and that all closure of earthen basins shall be in accordance with NRCS Conservation Practice Standard No. 360 (Waste Facility Closure).

28. NRCS Conservation Practice Standard No. 359 (Waste Treatment Lagoon) directs that waste storage lagoons be designed to accommodate, at a minimum: the volume of accumulated sludge for the period between sludge removal events; the minimum treatment volume (for anaerobic lagoons); the volume of manure, wastewater, and other wastes

accumulated during the treatment period; the depth of normal precipitation less evaporation on the surface area of the lagoon during the treatment period; and the depth of the 25-year, 24-hour storm precipitation on the surface area of the lagoon. Further, the NRCS Agricultural Waste Management Field Handbook, Part 651, ch. 10, suggests an additional minimum of 12 inches of freeboard be provided as a margin of safety.

29. NRCS Conservation Practice Standard No. 360 (Waste Facility Closure) generally directs that all manure, agricultural waste, and contaminated soil be removed to the maximum extent practicable and be utilized in accordance with NRCS Conservation Practice Standards No. 590 (Nutrient Management) and/or No. 633 (Waste Recycling).

30. Respondents began operation of the Facility on or around April 19, 2005.

31. At times relevant to this action, the Facility consisted of a CAFO and approximately 27 acres of cropland and timber, and contained two barns, Barn No. 1 and Barn No. 2, with a combined capacity of 1,460 swine<sup>1</sup> one shallow pit underneath Barn No. 1; and two wastewater lagoons, Lagoon No. 1 and Lagoon No. 2. Lagoon No. 1 was to be used as the primary wastewater lagoon, with Lagoon No. 2 serving as emergency overflow storage.

32. The shallow pit has a storage capacity of approximately 167,155 gallons.

33. Lagoon No. 1 has a storage capacity of approximately 2,729,068 gallons.

34. Lagoon No. 2 has a storage capacity of approximately 628,404 gallons.

35. The Facility contains 16 fields, denoted as: D1; D2; D3; H1; H2; H3; H4; H5; H6; J1; J2a; J2b; J3; J4; J5; and RD1.

36. Two forks of an unnamed tributary to Mud Creek are located either on or abutting the Facility: the northern fork of the unnamed tributary to Mud Creek bisects the Facility property and travels in a westerly direction, directly abutting all or a portion of Fields D3, J1, J2a, and J2b, and adjacent to Fields D1, D2, and H6; and the southern fork of the unnamed tributary to Mud Creek travels in a southern direction, adjacent to Field RD1.

37. The unnamed tributary flows directly into Mud Creek, which flows into the Obion River and thence into the Mississippi River, a traditionally navigable water of the United States.

38. Mud Creek is classified for the following uses: fish and aquatic life; recreation; livestock, watering and wildlife; and irrigation. See Tenn. Comp. R. & Regs. 0400-40-04-.03.

39. On various occasions as detailed below, Respondents used pumping equipment to discharge process wastewater from the Facility's lagoons into waters of the United States.

---

<sup>1</sup> Respondents have alleged that, beginning in or around September 2014 through December 2014, the Facility contained only one barn, Barn No. 1, with a capacity of 960 swine.

40. The 25-year, 24-hour rainfall event for Dresden, Tennessee is 6.5 inches.
41. Respondents obtained coverage to discharge pollutants as a result of rainfall events exceeding the 25-year, 24-hour storm event under the 2004 CAFO General Permit effective August 5, 2005 and expiring on August 5, 2009.
42. L.I. Smith & Associates, Inc. ("LIS&A") developed a NMP for Respondents' Facility, dated January 16, 2008, and revised March 13, 2009.
43. The LIS&A NMP detailed the required volume for the Lagoons, which provided for the volume of manure, bedding, wash water, flush water, normal runoff and external storage; the depth of normal precipitation; the depth of a 25-year, 24-hour storm event; and an additional three feet of freeboard as a margin of safety. The LIS&A NMP indicated that the Lagoons had a combined 2,145 days (or roughly 5 years and 10 months) of storage available.
44. Respondents did not re-submit a completed NOI within 30 days of the effective date of the 2010 CAFO General Permit, as required pursuant to TDEC directive. Thus, at no time since December 1, 2010 have Respondents had valid Permit coverage for discharges from the Facility.
45. On February 24, 2011, Respondents reported that they had discharged approximately 482,260 gallons of process wastewater from Lagoon No. 1 at the Facility. Respondents pumped down Lagoon No. 1 by approximately two feet and discharged the process wastewater from Lagoon No. 1 through a six-inch aluminum pipe, without spray dispersal, to Field J2, which abuts the northern fork of the unnamed tributary to Mud Creek. The discharge point was within 60 feet of the northern fork of the unnamed tributary to Mud Creek.
46. On February 25, 2011, Respondents reported that they had discharged approximately 142,560 gallons of process wastewater from Lagoon No. 2 at the Facility. Respondents pumped down Lagoon No. 2 by approximately 15 inches and discharged the process wastewater from Lagoon No. 2 through a six-inch aluminum pipe, without spray dispersal, to Field J2, which abuts the northern fork of the unnamed tributary to Mud Creek.
47. On August 6, 2013, Respondents reported that they had discharged approximately 237,000 gallons of process wastewater from Lagoon No. 1 at the Facility. Respondents pumped down Lagoon No. 1 by approximately 12 inches and discharged the process wastewater from Lagoon No. 1 through a traveling gun, thence to a heavily sodded area, and thence to the northern fork of the unnamed tributary to Mud Creek.
48. On September 10, 2013, the EPA and TDEC conducted a Compliance Inspection ("CI") of the Facility to evaluate the Facility's compliance with Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Consolidated CAFO Regulations. The CI and subsequently-reviewed

compliance records revealed that Respondents failed to comply with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311. Specifically, the EPA identified the following violations:

- a. An unauthorized wastewater discharge from the primary lagoon of approximately 482,260 gallons occurred on or about February 24, 2011, and entered into the northern fork of an unnamed tributary of Mud Creek, a water of the United States.
- b. An unauthorized wastewater discharge from the secondary lagoon of approximately 142,560 gallons occurred on or about February 25, 2011, and entered into the northern fork of an unnamed tributary of Mud Creek.
- c. An unauthorized wastewater discharge from the primary lagoon of approximately 237,000 gallons occurred on or about August 6, 2013, and entered into the northern fork of an unnamed tributary of Mud Creek.

49. Respondents allege that, in or around December 2014, all swine were removed from the Facility and the Facility has ceased operation as a CAFO.<sup>2</sup>

50. The EPA filed a Class II Administrative Complaint against Respondents<sup>3</sup> with the EPA Office of the Administrative Law Judges on August 13, 2015, seeking civil penalties for the violations cited in Paragraph 48.

51. On August 13, 2015, TDEC inspected the Facility and noted that Lagoon No. 1 contained a significant amount of liquid, and that Lagoon No. 2 had less than two feet of available freeboard. TDEC subsequently provided Respondents with pertinent information regarding proper closure of the waste storage lagoons via emails dated August 17, 2015 and February 11, 2016.

52. The EPA alleges that, as of the Effective Date of this AOC, Respondents have neither properly nor timely closed the waste storage lagoons at the Facility, and have failed to properly maintain the waste storage lagoons, including maintaining adequate freeboard to protect against future discharges to waters of the United States. The EPA further alleges that Respondents' failure to timely and properly close and/or properly maintain the lagoons constitutes a continuous violation in that there is a reasonable likelihood of future unauthorized discharge.

---

<sup>2</sup> TDEC inspections of the Facility conducted on February 23, 2015 and August 13, 2015 confirmed that, at those times, no swine were present at the Facility.

<sup>3</sup> Respondent Andrew H. Holt owns the Facility together with his wife, Eleanore F. Holt. The EPA initially included Mrs. Holt as a Respondent when it filed its Class II Administrative Complaint because of her status as co-owner of the Facility. However, because Mrs. Holt did not participate in any of the decision-making that led to the CWA violations addressed herein, on December 30, 2015, the EPA moved the Office of the Administrative Law Judges to withdraw with prejudice the portion of the Complaint as to Mrs. Holt. Chief Judge Susan L. Biro granted the EPA's motion on January 14, 2016.

53. Therefore, the EPA alleges that Respondents are in violation of Sections 301 of the CWA, 33 U.S.C. § 1311, by discharging wastewater from the Facility without proper authorization to waters of the United States.

### **III. Agreement on Consent**

54. Based on the foregoing Findings of Fact and Determinations of Law, as alleged by the EPA and neither admitted nor denied by Respondents, and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), **THE DIRECTOR HEREBY ORDERS AND RESPONDENTS HEREBY AGREE AND CONSENT TO THE PROVISIONS OF THE PARAGRAPHS BELOW:**

- a. Effective immediately upon the Effective Date of this AOC, Respondents shall maintain weekly records of the depth of the manure and wastewater in each Lagoon.
- b. Effective immediately upon the Effective Date of this AOC, if Respondents anticipate a discharge or overflow from the Lagoon(s), Respondents shall immediately notify the EPA pursuant to Paragraph 57 of such anticipated discharge or overflow.
- c. Within forty-five (45) days of the Effective Date of this AOC, submit Certification to the EPA that Respondents have drawn down the water level in Lagoons No. 1 and 2 to attain twenty-four (24) vertical inches of freeboard in each of the Lagoons, as measured from the lowest point of the top of each Lagoon's dike. Along with this Certification, submit Certification to the EPA as to the method of removal and/or utilization of such wastewater (e.g., land application dates, locations, receiving crop(s), rates, and weather conditions). Removal and/or utilization of such wastewater shall be in accordance with NRCS Conservation Practice Standards No. 590 (Nutrient Management) and/or No. 633 (Waste Recycling).
- d. Within ninety (90) days of the Effective Date of this AOC, prepare and submit to the EPA for review and approval a Lagoon Closure and Maintenance Plan. Under the Lagoon Closure and Maintenance Plan, Respondents shall specify, at a minimum, plans for:
  - i. Maintaining at all times not less than twenty-four (24) vertical inches of freeboard in the Lagoons;
  - ii. Attaining closure of Lagoons No. 1 and 2 within eighteen (18) months of the Effective Date of this AOC in accordance with NRCS Conservation Practice No. 360 (Waste Facility Closure), to include, at a minimum:

1. Removal of all manure, agricultural waste, and contaminated soil from the Lagoons to the extent practicable;
  2. Utilization of all liquid, slurry, sludge, solid waste, and soil removed from the Lagoons in accordance with NRCS Conservation Practice Standards No. 590 (Nutrient Management) and/or No. 633 (Waste Recycling).
- iii. Closure may be attained by either backfilling the Lagoons or converting the Lagoons to fresh water storage, pursuant to NRCS Conservation Practice No. 360 (Waste Facility Closure).
1. If Respondents seek to backfill any Lagoon, the backfill height shall exceed the height of the design finished grade by a minimum of five (5) percent to allow for settlement. The top one foot of the backfill shall be constructed of the most impervious soil material readily available and mounded to shed rainfall runoff. Respondents shall incorporate available topsoil where feasible to aid establishment of vegetation.
  2. If Respondents seek to convert any Lagoon to fresh water storage, the converted impoundment shall meet the requirements set forth in the appropriate NRCS Practice Standard for the intended purposes. Where the original impoundment was not constructed to meet NRCS standards, the investigation for structural integrity shall be in accordance with National Engineering Manual (NEM) 501.23. When it is not practical to remove the sludge from a waste impoundment that is being converted to fresh water storage, the impoundment shall not be used for fish production, swimming, or livestock watering until the water quality is adequate for these purposes and has met all local laws and regulations.
- e. Within thirty (30) days of the Effective Date of this AOC, and every thirty (30) days thereafter until Respondents achieve full closure of the Lagoons, Respondents shall submit a certified monthly Progress Report to the EPA which includes, at a minimum:
- i. Weekly records of the depth of manure and wastewater in each Lagoon, pursuant to Paragraph 54.a above;

- ii. A report on any discharges or overflows from the Lagoons(s) during each 30-day period, including an estimate of the volume of wastewater discharged, the location(s) to which the wastewater was discharged, and any actions taken by Respondents to respond to the discharge(s);
  - iii. A report on Respondents' progress towards closure, including the method(s) of removal and/or utilization of liquid, slurry, sludge, solid waste, and soil removed from the Lagoons; and
  - iv. Photographic evidence of Lagoon closure progress.
- f. Within seven (7) calendar days of completion of closure of each Lagoon, Respondents shall notify the EPA and allow the EPA to conduct an inspection of the closed Lagoon(s).

55. Respondents may submit a request, in writing, for an extension of time to comply with the requirements of this AOC within seven (7) calendar days of the required completion date. Such request must include the reason(s) for the extension request and a date when compliance will be achieved. Any extension must be granted by the EPA in writing to be effective.

56. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondents as specified by 40 C.F.R. § 122.22 and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

57. All reports, notifications, documentation, and submittals required by this AOC shall be sent by certified mail or its equivalent to the following addresses:

Mr. Don Joe  
NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

#### **IV. Final Report and Termination of AOC**

58. Within thirty (30) calendar days after Respondents have fully completed and implemented the actions required by Section III (Agreement on Consent) of this AOC, Respondents shall submit for the EPA's review and approval a final report (Final Report) that includes: (a) a description of all of the actions which have been taken toward achieving compliance with this AOC; (b) an assessment of the effectiveness of such actions; and (c) an analysis of whether additional actions beyond the scope of this AOC are necessary to further comply with the CWA and this AOC.

59. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondents and this AOC shall be deemed terminated.

60. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondents, provide a list of deficiencies, and may require Respondents to modify its actions as appropriate in order to correct such deficiencies. If so required, Respondents shall implement the modified and approved requirement(s) and submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement any of the approved modified requirement(s) shall be a violation of this AOC.

#### **V. General Provisions**

61. Respondents' compliance with this AOC does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 et seq., and its implementing regulations. Respondents shall remain solely responsible for compliance with the terms of the CWA, its implementing regulations, and this AOC.

62. Nothing in this AOC shall constitute a waiver, suspension, or modification of the terms and conditions of any Permit, which remains in full force and effect.

63. Failure to comply with the requirements herein shall constitute a violation of this AOC and the CWA, and may subject Respondents to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

64. This AOC shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state, or local permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

65. Issuance of this AOC shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek

penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment under the CWA or any other federal or state statute, regulation, or permit.

66. The EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this AOC and to enforce this AOC.

67. Nothing in this AOC is intended to nor shall be construed to operate in any way to resolve any potential criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this AOC.

68. This AOC applies to and is binding upon Respondents and their agents, successors, and assigns.

69. Any change in the legal status of Respondents, including but not limited to any transfer of assets of real or personal property, shall not alter Respondents' responsibilities under this AOC.

70. Respondents admit to the jurisdictional allegations set forth within this AOC, but do not admit wrongdoing or liability.

71. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondents may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to any right of judicial review of the AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

72. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this AOC.

73. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), the EPA has sent a copy of this AOC to the State of Tennessee.

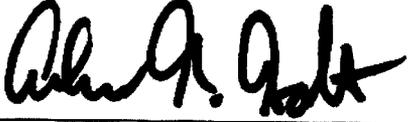
74. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

## **VI. Effective Date**

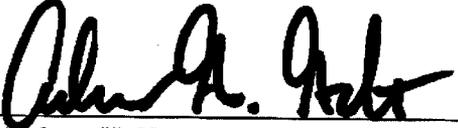
75. This AOC shall become effective upon receipt by Respondents' counsel of a copy of the fully executed AOC.

**AGREED AND CONSENTED TO:**

**For RESPONDENTS:**

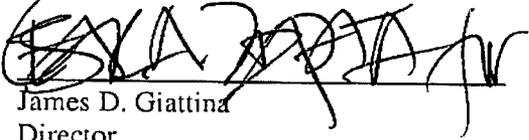
  
\_\_\_\_\_  
Andrew H. Holt, in his individual capacity

Date: 3/11/16

  
\_\_\_\_\_  
Andrew H. Holt, d/b/a A & E Livestock

Date: 3/11/16

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

  
\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division  
U.S. Environmental Protection Agency  
Region 4

Date: 3/17/16

**BLANK PAGE**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 24 2016

Via EPA's Internal Mail

Ms. Sybil Anderson  
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900R  
Washington, DC 20460

Re: In re Andrew H. Holt d/b/a A & E Livestock  
Docket No. CWA-04-2015-4506  
Transmittal of Complainant's Motion to Withdraw Without Prejudice

Dear Ms. Anderson:

Enclosed for filing in the above-referenced case, please find the original and one copy of Complainant's Motion to Withdraw Complaint Without Prejudice.

A copy of the same is also being transmitted to counsel for Respondents.

Please feel free to contact me at (404) 562-9701 or via email at armor.suzanne@epa.gov if you have any questions or concerns. Thank you for your assistance in this matter.

Sincerely,

Suzanne K. Armor  
Associate Regional Counsel  
Office of Regional Counsel

Enclosures (2)

cc: John M. Miles  
via Certified Mail, Return Receipt Requested  
7013 2630 0000 0291 8145

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

IN THE MATTER OF: )

ANDREW H. HOLT )  
d/b/a A & E LIVESTOCK, )  
DRESDEN, TENNESSEE )

RESPONDENT. )  
\_\_\_\_\_ )

DOCKET NO: CWA-04-2015-4506

**COMPLAINANT'S MOTION TO WITHDRAW COMPLAINT WITHOUT PREJUDICE**

COMES NOW the Complainant, the United States Environmental Protection Agency, Region 4 ("EPA"), and respectfully requests the Court allow Complainant to withdraw without prejudice its Complaint against Andrew H. Holt, doing business as A & E Livestock.

As grounds therefore states as follows:

**I. Facts**

Complainant filed its Administrative Complaint and Notice of Proposed Penalty Assessment ("Initial Complaint") on August 13, 2015, naming both Andrew H. Holt and Eleanore F. Holt as Respondents.<sup>1</sup>

The parties entered into Alternative Dispute Resolution ("ADR"), and, by Order dated October 2, 2015, Judge Barbara A. Gunning was designated as the neutral to initiate and conduct

---

<sup>1</sup> On December 30, 2015, the EPA moved the Office of the Administrative Law Judges to withdraw with prejudice the portion of the Complaint as to Mrs. Holt, because Mrs. Holt did not participate in any of the decision-making that led to the Clean Water Act ("CWA") violations addressed in the Complaint. Chief Judge Susan L. Biro granted the EPA's motion on January 14, 2016.

the ADR process to facilitate a settlement of this proceeding. Upon approval by Chief Judge Susan L. Biro on December 22, 2015, ADR was continued to February 4, 2016.

During ADR, the parties reached an agreement in principle regarding the payment of civil penalties to resolve this matter. However, prior to finalizing a Consent Agreement and Final Order (“CA/FO”) for payment of a nominal penalty, the EPA learned that, as of August 2015, the two Lagoons at Respondent’s Facility had not been properly closed, nor did it appear that Respondent was in the process of timely and/or properly closing the Lagoons, as required pursuant to the Tennessee State Operating Permit for Class II Concentrated Animal Feeding Operations, Permit No. SOPCD0000 (“2010 CAFO General Permit”) and Tenn. Comp. R. and Regs. 0400-40-05-.14(6)(b)(1).

Part 1.6.4 of the 2010 CAFO Permit and Tenn. Comp. R. and Regs. 0400-40-05-.14(6)(b)(1) require that concentrated animal feeding operations (“CAFOs”) shall have in place a closure/rehabilitation plan that meets or exceeds U.S. Department of Agriculture, Natural Resources Conservation Service (“NRCS”) standards, addresses maintenance of the Facility until proper closure can be completed, and includes a proposed schedule for closure not to exceed 360 days.

Part 4.13 of the 2010 CAFO Permit requires that CAFOs must fully implement their closure/rehabilitation plans within twelve (12) months of ceasing operation; that all earthen basins must be closed if the CAFO ceases operation; and that all closure of earthen basins shall be in accordance with NRCS Conservation Practice Standard No. 360 (Waste Facility Closure).

NRCS Conservation Practice Standard No. 359 (Waste Treatment Lagoon) directs that waste storage lagoons be designed to accommodate, at a minimum: the volume of accumulated sludge for the period between sludge removal events; the minimum treatment volume (for

anaerobic lagoons); the volume of manure, wastewater, and other wastes accumulated during the treatment period; the depth of normal precipitation less evaporation on the surface area of the lagoon during the treatment period; and the depth of the 25-year, 24-hour storm precipitation on the surface area of the lagoon. Further, the NRCS Agricultural Waste Management Field Handbook, Part 651, ch. 10, suggests an additional minimum of 12 inches of freeboard be provided as a margin of safety.

NRCS Conservation Practice Standard No. 360 (Waste Facility Closure) generally directs that all manure, agricultural waste, and contaminated soil be removed to the maximum extent practicable and be utilized in accordance with NRCS Conservation Practice Standards No. 590 (Nutrient Management) and/or No. 633 (Waste Recycling).

Respondent stated in his Answer that he had removed all livestock from the Facility and that the Facility had ceased operation as a CAFO in or around December 2014. See Respondent's Answer to Administrative Complaint and to Notice of Proposed Penalty Assessment, at ¶ 75 (Sept. 16, 2015); see also Respondent's Proposed Amended Answer, at ¶76 (Dec. 9, 2015); Respondent's Answer to Amended Administrative Complaint and to Notice of Proposed Penalty Assessment, at ¶ 76 (Nov. 17, 2015). Therefore, by the terms of the 2010 CAFO General Permit and pursuant to Tenn. Comp. R. and Regs. 0400-40-05-.14(6)(b)(1), Respondent was required to complete closure of the Lagoons no later than December 2015.

On August 13, 2015, TDEC inspected the Facility and noted that Lagoon No. 1 contained a significant amount of liquid, and that Lagoon No. 2 had less than two feet of available freeboard. TDEC subsequently provided Respondent with pertinent information regarding proper closure of the waste storage lagoons via emails dated August 17, 2015 and February 11, 2016.

To the best of Complainant's knowledge, Respondent has neither properly nor timely closed the waste storage lagoons at the Facility, and has failed to properly maintain the waste storage lagoons, including maintaining adequate freeboard to protect against future discharges to waters of the United States. Respondent's failure to timely and properly close and/or properly maintain the lagoons constitutes a continuous violation in that there is a reasonable likelihood of future unauthorized discharge. See Gwaltney of Smithfield v. Chesapeake Bay Foundation, 484 U.S. 49, 57 (1987) ("The most natural reading of 'to be in violation' [of the CWA] is a requirement that [the EPA] allege a state of either continuous or intermittent violation -- that is, a reasonable likelihood that a past polluter will continue to pollute in the future."). Therefore, Complainant alleges that Respondent remains in violation of Sections 301 of the CWA, 33 U.S.C. § 1311, by discharging wastewater from the Facility without proper authorization to waters of the United States.

The parties have therefore entered into an Administrative Compliance Order on Consent ("AOC"), Docket No. CWA-04-2016-4771, signed by Respondent on March 11, 2016 and by the EPA Region 4 Water Protection Division Director on March 17, 2016 (attached hereto as **Exhibit A**), which commits Respondent to properly maintain and close the Lagoons at the Facility under a compliance schedule with EPA oversight.

While the EPA maintains that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, on at least three occasions – February 24, 2011; February 25, 2011; and August 6, 2013 – and that such violations remain subject to civil penalties pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the parties believe it is appropriate at this juncture to allow the Agency to withdraw its Complaint without prejudice. The EPA has every reason to believe that

Respondent will comply with the terms of the AOC, and does not intend at this time to refile its Complaint in another forum.

However, in the event that Respondent does not fully comply with the AOC, the EPA believes it would be more appropriate for the Agency to seek to compel Respondent's compliance with the AOC, along with any relevant civil penalties, in a civil judicial forum, as contemplated by Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), in the interest of promoting judicial economy, as this Court is without the authority to compel injunctive relief.

## II. Argument

Pursuant to 40 C.F.R. § 22.14(d), Complainant may withdraw the Complaint, or any part thereof, without prejudice after the filing of an Answer, only upon motion granted by the Presiding Officer. The authority to request withdrawal of a Complaint, or any part thereof, has been delegated from the Administrator of the EPA to the Regional Administrator of EPA Region 4. The Regional Administrator has, in turn, redelegated this authority to the Director of the Water Protection Division of EPA Region 4.

“The EPA's administrative practice rule governing withdrawal of a complaint without prejudice is substantively equivalent to Rule 41(a) of the Federal Rules of Civil Procedure,” which also requires an order of the court for dismissal of an action without prejudice. In re City of Mandeville, 1998 EPA ALJ LEXIS 57, at \*7 (E.P.A. July 14, 1998).

As the United States Supreme Court noted in Jones v. Sec. & Exch.Comm'n, “The general rule is settled for federal tribunals that a plaintiff possesses the unqualified right to dismiss his complaint at law or his bill in equity unless some plain legal prejudice to the defendant other than the mere prospect of a second litigation upon the subject matter.”

298 U.S. 1, 18-19 (1935). See also A.V. by Versace, Inc. v. Gianni Versace S.p.A., 261 F.R.D. 29, 31 (S.D.N.Y. 2009) (there is a presumption in favor of dismissing without prejudice unless the defendant shows that he will “suffer substantial prejudice as a result”).

Complainant has conferred with Respondent, and the parties stipulate that Respondent will not suffer plain legal prejudice as a result of Complainant’s withdrawal of the Complaint.

### **III. Conclusion**

Prior to filing this Motion, the undersigned contacted the opposing party, and provided Respondent’s counsel an opportunity to review this Motion. The opposing party has stated that he does not intend to oppose the Motion.

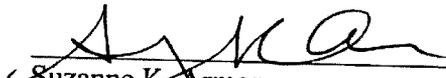
In view of the foregoing, Complainant respectfully request that the Court allow Complainant to withdraw its Complaint against Andrew H. Holt, doing business as A & E Livestock, without prejudice.

Respectfully submitted,

Date: 3/22/16

  
\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division

Date: 3/24/16

  
\_\_\_\_\_  
Suzanne K. Armor  
Counsel for Complainant  
U.S. Environmental Protection Agency  
Region 4  
(404) 562-9701  
Armor.Suzanne@epa.gov

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the date noted below, I have served to the Headquarters Hearing Clerk the original and one copy of the foregoing Complainant's Motion to Withdraw Complaint Without Prejudice, in *In re Andrew H. Holt d/b/aA & E Livestock*, Docket No. CWA-04-2015-4506. I also certify that I have served a true and correct copy of the same on the parties listed below in the manner specified.

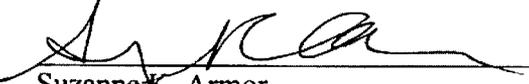
Sybil Anderson  
Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1900R  
Washington, DC 20460

(Via EPA's internal mail)

John M. Miles  
511 South Third Street  
P.O. Box 8  
Union City, Tennessee 38281

(Via Certified Mail, Return Receipt Requested)

Date: 3/24/10

  
Suzanne K. Armor  
Counsel for Complainant  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

**EXHIBIT A**  
**ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT**  
**Docket No. CWA-04-2016-4771**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAR 17 2016

CERTIFIED MAIL 7014 2870 0000 3318 2923  
RETURN RECEIPT REQUESTED

Mr. John M. Miles, Esq.  
511 South Third Street  
P.O. Box 8  
Union City, Tennessee 38281

Re: Administrative Compliance Order on Consent, No. CWA 04-2016-4771  
Andrew H. Holt d/b/a A & E Livestock  
Dresden, Weakley County, Tennessee

Dear Mr. Miles:

Enclosed, please find an executed copy of the Administrative Compliance Order on Consent (AOC), Docket No.: CWA-04-2016-4771, pertaining to the above referenced facility. Please take note of Paragraphs 54-60 of the AOC, which require certain actions and submittals from your client, Mr. Holt.

The EPA appreciates your cooperation in this matter. If you have any questions concerning the enclosed AOC, please contact Ms. Suzanne Armor, Associate Regional Counsel, at (404) 562-9701 or via email at armor.suzanne@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief  
NPDES Permitting and Enforcement Branch  
Water Protection Division

Enclosure

cc: Ms. Tisha Calabrese Benton, Director  
Tennessee Department of Environment and Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

ANDREW H. HOLT,  
d/b/a A & E LIVESTOCK,  
DRESDEN, TENNESSEE

RESPONDENTS.

---

) ADMINISTRATIVE COMPLIANCE  
) ORDER ON CONSENT

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

I. Statutory Authority

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 4, and further delegated by the Regional Administrator to the Director of the Water Protection Division of the EPA, Region 4.

II. Findings of Fact and Determinations of Law

For purposes of this AOC, Respondents admit the jurisdictional allegations, but neither admit nor deny the factual allegations, set out below. The EPA asserts that the following facts are true and substantiated:

1. Andrew H. Holt is an individual and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

2. Andrew H. Holt, doing business as A & E Livestock, is a general partnership and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3. The term "Respondents," as used herein, refers both to Mr. Holt in his individual capacity and to Mr. Holt d/b/a A & E Livestock.

4. At times relevant to this action, Respondents owned and/or operated a concentrated animal feeding operation (“CAFO”), as defined at 40 C.F.R. § 122.23(b)(2), located at 357 Woodruff Road, Weakley County, Dresden, Tennessee 38225 (“Facility”).

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation’s waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Pursuant to Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12), a “discharge of a pollutant” means any addition of any pollutant to navigable waters from a point source.

7. The term “pollutant” means, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

8. The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

9. A “concentrated animal feeding operation” or “CAFO” means an animal feeding operation that is defined as a Large CAFO or as a Medium CAFO. 40 C.F.R. § 122.23(b)(2).

10. An “animal feeding operation” means a lot or facility (other than an aquatic animal production facility) where: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1).

11. A “Medium CAFO” includes any animal feeding operation with: (i) 750 to 2,499 swine each weighing 55 pounds or more; and (ii) where pollutants are either discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. 40 C.F.R. § 122.23(b)(6).

12. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits

allowing for the discharge of pollutants, including agricultural waste, into navigable waters subject to specific terms and conditions.

13. The EPA has granted the State of Tennessee, through the Department of Environment and Conservation (TDEC), approval to issue NPDES permits pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

14. Section 402(a) of the CWA, 33 U.S.C. § 1342, sets forth requirements for the issuance of NPDES permits for the discharge of pollutants. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), requires, in part, that a discharge of pollutants to navigable waters must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

15. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the EPA promulgated regulations setting forth the NPDES permit requirements for CAFOs at 40 Code of Federal Regulation (C.F.R.) Parts 122 and 412 (known as the "Consolidated CAFO Regulations").

16. The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural stormwater discharge. 40 C.F.R. § 122.23(e).

17. 40 C.F.R. § 122.23(d)(1) prohibits discharge by a CAFO unless the discharge is authorized by an NPDES Permit.

18. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits or other animal feeding operations facilities; direct contact swimming, washing, or spray cooling of animals; or dust control; as well as any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding. 40 C.F.R. § 122.23(b)(8).

19. TDEC issued a General NPDES Permit for Concentrated Animal Feeding Operations, Permit No. TNA000164 ("2004 CAFO General Permit"), in accordance with the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. 69-3-101 et seq., and the CWA, which was effective on August 7, 2004 and expired on August 5, 2009.

20. To obtain coverage under the 2004 CAFO General Permit, an applicant was required to submit a Notice of Intent (NOI) along with a closure/rehabilitation plan for any waste storage structures at the facility and either a comprehensive or site-specific NMP to the Tennessee Department of Agriculture (TDA). Following review by the TDA, the NOI would be forwarded to TDEC.

21. In relevant part, the 2004 CAFO General Permit prohibited all wastewater discharges from a CAFO to waters of the State of Tennessee, except when either chronic or catastrophic rainfall events caused an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain: (i) all process wastewater resulting from the operation of the CAFO, plus; (ii) all runoff from a 25-year, 24-hour rainfall event for an existing CAFO. See Part II of 2004 CAFO General Permit.

22. Pursuant to correspondence from TDEC dated January 13, 2010, permittees may have maintained coverage under the expired 2004 CAFO General Permit by re-submitting a completed NOI within 30 days of the effective date of new General Permit.

23. TDEC issued a State Operating Permit for Class II Concentrated Animal Feeding Operations, Permit No. SOPCD0000 ("2010 CAFO General Permit"), in accordance with the Tennessee Water Quality Control Act of 1977, Tenn. Code Ann. 69-3-108, which was effective on November 1, 2010 and expired on October 31, 2015.

24. To obtain coverage under the 2010 CAFO General Permit, an applicant was required to submit a Notice of Intent (NOI), a closure/rehabilitation plan for any waste storage structures at the facility, and a site-specific nutrient management plan ("NMP") that meets the requirements of TDEC Rule 1200-4-5-.14 to both TDA and TDEC. The application would be reviewed by TDA and, upon approval, TDA would notify TDEC.

25. In relevant part, the 2010 CAFO General Permit prohibited all wastewater discharges from a CAFO to waters of the State of Tennessee, except when either chronic or catastrophic rainfall events caused an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain: (i) all process wastewater resulting from the operation of the CAFO, plus; (ii) all runoff from a 25-year, 24-hour rainfall event for an existing CAFO. See Part II of 2004 CAFO General Permit.

26. Part 1.6.4 of the 2010 CAFO Permit and Tenn. Comp. R. and Regs. 0400-40-05-.14(6)(b)(1) require that CAFOs shall have in place a closure/rehabilitation plan that meets or exceeds U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) standards, addresses maintenance of the Facility until proper closure can be completed, and includes a proposed schedule for closure not to exceed 360 days.

27. Part 4.13 of the 2010 CAFO Permit requires that CAFOs must fully implement their closure/rehabilitation plans within twelve (12) months of ceasing operation; that all earthen basins must be closed if the CAFO ceases operation; and that all closure of earthen basins shall be in accordance with NRCS Conservation Practice Standard No. 360 (Waste Facility Closure).

28. NRCS Conservation Practice Standard No. 359 (Waste Treatment Lagoon) directs that waste storage lagoons be designed to accommodate, at a minimum: the volume of accumulated sludge for the period between sludge removal events; the minimum treatment volume (for anaerobic lagoons); the volume of manure, wastewater, and other wastes

accumulated during the treatment period; the depth of normal precipitation less evaporation on the surface area of the lagoon during the treatment period; and the depth of the 25-year, 24-hour storm precipitation on the surface area of the lagoon. Further, the NRCS Agricultural Waste Management Field Handbook, Part 651, ch. 10, suggests an additional minimum of 12 inches of freeboard be provided as a margin of safety.

29. NRCS Conservation Practice Standard No. 360 (Waste Facility Closure) generally directs that all manure, agricultural waste, and contaminated soil be removed to the maximum extent practicable and be utilized in accordance with NRCS Conservation Practice Standards No. 590 (Nutrient Management) and/or No. 633 (Waste Recycling).

30. Respondents began operation of the Facility on or around April 19, 2005.

31. At times relevant to this action, the Facility consisted of a CAFO and approximately 27 acres of cropland and timber, and contained two barns, Barn No. 1 and Barn No. 2, with a combined capacity of 1,460 swine<sup>1</sup> one shallow pit underneath Barn No. 1; and two wastewater lagoons, Lagoon No. 1 and Lagoon No. 2. Lagoon No. 1 was to be used as the primary wastewater lagoon, with Lagoon No. 2 serving as emergency overflow storage.

32. The shallow pit has a storage capacity of approximately 167,155 gallons.

33. Lagoon No. 1 has a storage capacity of approximately 2,729,068 gallons.

34. Lagoon No. 2 has a storage capacity of approximately 628,404 gallons.

35. The Facility contains 16 fields, denoted as: D1; D2; D3; H1; H2; H3; H4; H5; H6; J1; J2a; J2b; J3; J4; J5; and RD1.

36. Two forks of an unnamed tributary to Mud Creek are located either on or abutting the Facility: the northern fork of the unnamed tributary to Mud Creek bisects the Facility property and travels in a westerly direction, directly abutting all or a portion of Fields D3, J1, J2a, and J2b, and adjacent to Fields D1, D2, and H6; and the southern fork of the unnamed tributary to Mud Creek travels in a southern direction, adjacent to Field RD1.

37. The unnamed tributary flows directly into Mud Creek, which flows into the Obion River and thence into the Mississippi River, a traditionally navigable water of the United States.

38. Mud Creek is classified for the following uses: fish and aquatic life; recreation; livestock, watering and wildlife; and irrigation. See Tenn. Comp. R. & Regs. 0400-40-04-.03.

39. On various occasions as detailed below, Respondents used pumping equipment to discharge process wastewater from the Facility's lagoons into waters of the United States.

---

<sup>1</sup> Respondents have alleged that, beginning in or around September 2014 through December 2014, the Facility contained only one barn, Barn No. 1, with a capacity of 960 swine.

40. The 25-year, 24-hour rainfall event for Dresden, Tennessee is 6.5 inches.
41. Respondents obtained coverage to discharge pollutants as a result of rainfall events exceeding the 25-year, 24-hour storm event under the 2004 CAFO General Permit effective August 5, 2005 and expiring on August 5, 2009.
42. L.I. Smith & Associates, Inc. ("LIS&A") developed a NMP for Respondents' Facility, dated January 16, 2008, and revised March 13, 2009.
43. The LIS&A NMP detailed the required volume for the Lagoons, which provided for the volume of manure, bedding, wash water, flush water, normal runoff and external storage; the depth of normal precipitation; the depth of a 25-year, 24-hour storm event; and an additional three feet of freeboard as a margin of safety. The LIS&A NMP indicated that the Lagoons had a combined 2,145 days (or roughly 5 years and 10 months) of storage available.
44. Respondents did not re-submit a completed NOI within 30 days of the effective date of the 2010 CAFO General Permit, as required pursuant to TDEC directive. Thus, at no time since December 1, 2010 have Respondents had valid Permit coverage for discharges from the Facility.
45. On February 24, 2011, Respondents reported that they had discharged approximately 482,260 gallons of process wastewater from Lagoon No. 1 at the Facility. Respondents pumped down Lagoon No. 1 by approximately two feet and discharged the process wastewater from Lagoon No. 1 through a six-inch aluminum pipe, without spray dispersal, to Field J2, which abuts the northern fork of the unnamed tributary to Mud Creek. The discharge point was within 60 feet of the northern fork of the unnamed tributary to Mud Creek.
46. On February 25, 2011, Respondents reported that they had discharged approximately 142,560 gallons of process wastewater from Lagoon No. 2 at the Facility. Respondents pumped down Lagoon No. 2 by approximately 15 inches and discharged the process wastewater from Lagoon No. 2 through a six-inch aluminum pipe, without spray dispersal, to Field J2, which abuts the northern fork of the unnamed tributary to Mud Creek.
47. On August 6, 2013, Respondents reported that they had discharged approximately 237,000 gallons of process wastewater from Lagoon No. 1 at the Facility. Respondents pumped down Lagoon No. 1 by approximately 12 inches and discharged the process wastewater from Lagoon No. 1 through a traveling gun, thence to a heavily sodded area, and thence to the northern fork of the unnamed tributary to Mud Creek.
48. On September 10, 2013, the EPA and TDEC conducted a Compliance Inspection ("CI") of the Facility to evaluate the Facility's compliance with Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Consolidated CAFO Regulations. The CI and subsequently-reviewed

compliance records revealed that Respondents failed to comply with the requirements of Section 301 of the CWA, 33 U.S.C. § 1311. Specifically, the EPA identified the following violations:

- a. An unauthorized wastewater discharge from the primary lagoon of approximately 482,260 gallons occurred on or about February 24, 2011, and entered into the northern fork of an unnamed tributary of Mud Creek, a water of the United States.
- b. An unauthorized wastewater discharge from the secondary lagoon of approximately 142,560 gallons occurred on or about February 25, 2011, and entered into the northern fork of an unnamed tributary of Mud Creek.
- c. An unauthorized wastewater discharge from the primary lagoon of approximately 237,000 gallons occurred on or about August 6, 2013, and entered into the northern fork of an unnamed tributary of Mud Creek.

49. Respondents allege that, in or around December 2014, all swine were removed from the Facility and the Facility has ceased operation as a CAFO.<sup>2</sup>

50. The EPA filed a Class II Administrative Complaint against Respondents<sup>3</sup> with the EPA Office of the Administrative Law Judges on August 13, 2015, seeking civil penalties for the violations cited in Paragraph 48.

51. On August 13, 2015, TDEC inspected the Facility and noted that Lagoon No. 1 contained a significant amount of liquid, and that Lagoon No. 2 had less than two feet of available freeboard. TDEC subsequently provided Respondents with pertinent information regarding proper closure of the waste storage lagoons via emails dated August 17, 2015 and February 11, 2016.

52. The EPA alleges that, as of the Effective Date of this AOC, Respondents have neither properly nor timely closed the waste storage lagoons at the Facility, and have failed to properly maintain the waste storage lagoons, including maintaining adequate freeboard to protect against future discharges to waters of the United States. The EPA further alleges that Respondents' failure to timely and properly close and/or properly maintain the lagoons constitutes a continuous violation in that there is a reasonable likelihood of future unauthorized discharge.

---

<sup>2</sup> TDEC inspections of the Facility conducted on February 23, 2015 and August 13, 2015 confirmed that, at those times, no swine were present at the Facility.

<sup>3</sup> Respondent Andrew H. Holt owns the Facility together with his wife, Eleanore F. Holt. The EPA initially included Mrs. Holt as a Respondent when it filed its Class II Administrative Complaint because of her status as co-owner of the Facility. However, because Mrs. Holt did not participate in any of the decision-making that led to the CWA violations addressed herein, on December 30, 2015, the EPA moved the Office of the Administrative Law Judges to withdraw with prejudice the portion of the Complaint as to Mrs. Holt. Chief Judge Susan L. Biro granted the EPA's motion on January 14, 2016.

53. Therefore, the EPA alleges that Respondents are in violation of Sections 301 of the CWA, 33 U.S.C. § 1311, by discharging wastewater from the Facility without proper authorization to waters of the United States.

### **III. Agreement on Consent**

54. Based on the foregoing Findings of Fact and Determinations of Law, as alleged by the EPA and neither admitted nor denied by Respondents, and pursuant to the authority of Sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), THE DIRECTOR HEREBY ORDERS AND RESPONDENTS HEREBY AGREE AND CONSENT TO THE PROVISIONS OF THE PARAGRAPHS BELOW:

- a. Effective immediately upon the Effective Date of this AOC, Respondents shall maintain weekly records of the depth of the manure and wastewater in each Lagoon.
- b. Effective immediately upon the Effective Date of this AOC, if Respondents anticipate a discharge or overflow from the Lagoon(s), Respondents shall immediately notify the EPA pursuant to Paragraph 57 of such anticipated discharge or overflow.
- c. Within forty-five (45) days of the Effective Date of this AOC, submit Certification to the EPA that Respondents have drawn down the water level in Lagoons No. 1 and 2 to attain twenty-four (24) vertical inches of freeboard in each of the Lagoons, as measured from the lowest point of the top of each Lagoon's dike. Along with this Certification, submit Certification to the EPA as to the method of removal and/or utilization of such wastewater (e.g., land application dates, locations, receiving crop(s), rates, and weather conditions). Removal and/or utilization of such wastewater shall be in accordance with NRCS Conservation Practice Standards No. 590 (Nutrient Management) and/or No. 633 (Waste Recycling).
- d. Within ninety (90) days of the Effective Date of this AOC, prepare and submit to the EPA for review and approval a Lagoon Closure and Maintenance Plan. Under the Lagoon Closure and Maintenance Plan, Respondents shall specify, at a minimum, plans for:
  - i. Maintaining at all times not less than twenty-four (24) vertical inches of freeboard in the Lagoons;
  - ii. Attaining closure of Lagoons No. 1 and 2 within eighteen (18) months of the Effective Date of this AOC in accordance with NRCS Conservation Practice No. 360 (Waste Facility Closure), to include, at a minimum:

1. Removal of all manure, agricultural waste, and contaminated soil from the Lagoons to the extent practicable;
  2. Utilization of all liquid, slurry, sludge, solid waste, and soil removed from the Lagoons in accordance with NRCS Conservation Practice Standards No. 590 (Nutrient Management) and/or No. 633 (Waste Recycling).
- iii. Closure may be attained by either backfilling the Lagoons or converting the Lagoons to fresh water storage, pursuant to NRCS Conservation Practice No. 360 (Waste Facility Closure).
1. If Respondents seek to backfill any Lagoon, the backfill height shall exceed the height of the design finished grade by a minimum of five (5) percent to allow for settlement. The top one foot of the backfill shall be constructed of the most impervious soil material readily available and mounded to shed rainfall runoff. Respondents shall incorporate available topsoil where feasible to aid establishment of vegetation.
  2. If Respondents seek to convert any Lagoon to fresh water storage, the converted impoundment shall meet the requirements set forth in the appropriate NRCS Practice Standard for the intended purposes. Where the original impoundment was not constructed to meet NRCS standards, the investigation for structural integrity shall be in accordance with National Engineering Manual (NEM) 501.23. When it is not practical to remove the sludge from a waste impoundment that is being converted to fresh water storage, the impoundment shall not be used for fish production, swimming, or livestock watering until the water quality is adequate for these purposes and has met all local laws and regulations.
- e. Within thirty (30) days of the Effective Date of this AOC, and every thirty (30) days thereafter until Respondents achieve full closure of the Lagoons, Respondents shall submit a certified monthly Progress Report to the EPA which includes, at a minimum:
- i. Weekly records of the depth of manure and wastewater in each Lagoon, pursuant to Paragraph 54.a above;

- ii. A report on any discharges or overflows from the Lagoons(s) during each 30-day period, including an estimate of the volume of wastewater discharged, the location(s) to which the wastewater was discharged, and any actions taken by Respondents to respond to the discharge(s);
  - iii. A report on Respondents' progress towards closure, including the method(s) of removal and/or utilization of liquid, slurry, sludge, solid waste, and soil removed from the Lagoons; and
  - iv. Photographic evidence of Lagoon closure progress.
- f. Within seven (7) calendar days of completion of closure of each Lagoon, Respondents shall notify the EPA and allow the EPA to conduct an inspection of the closed Lagoon(s).

55. Respondents may submit a request, in writing, for an extension of time to comply with the requirements of this AOC within seven (7) calendar days of the required completion date. Such request must include the reason(s) for the extension request and a date when compliance will be achieved. Any extension must be granted by the EPA in writing to be effective.

56. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondents as specified by 40 C.F.R. § 122.22 and shall include the following statement:

"I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

57. All reports, notifications, documentation, and submittals required by this AOC shall be sent by certified mail or its equivalent to the following addresses:

Mr. Don Joe  
NPDES Permitting and Enforcement Branch  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

#### **IV. Final Report and Termination of AOC**

58. Within thirty (30) calendar days after Respondents have fully completed and implemented the actions required by Section III (Agreement on Consent) of this AOC, Respondents shall submit for the EPA's review and approval a final report (Final Report) that includes: (a) a description of all of the actions which have been taken toward achieving compliance with this AOC; (b) an assessment of the effectiveness of such actions; and (c) an analysis of whether additional actions beyond the scope of this AOC are necessary to further comply with the CWA and this AOC.

59. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondents and this AOC shall be deemed terminated.

60. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondents, provide a list of deficiencies, and may require Respondents to modify its actions as appropriate in order to correct such deficiencies. If so required, Respondents shall implement the modified and approved requirement(s) and submit a modified Final Report in accordance with the EPA notice. Failure by Respondents to implement any of the approved modified requirement(s) shall be a violation of this AOC.

#### **V. General Provisions**

61. Respondents' compliance with this AOC does not necessarily constitute compliance with the provisions of the CWA, 33 U.S.C. § 1251 et seq., and its implementing regulations. Respondents shall remain solely responsible for compliance with the terms of the CWA, its implementing regulations, and this AOC.

62. Nothing in this AOC shall constitute a waiver, suspension, or modification of the terms and conditions of any Permit, which remains in full force and effect.

63. Failure to comply with the requirements herein shall constitute a violation of this AOC and the CWA, and may subject Respondents to penalties as provided in Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

64. This AOC shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any other federal, state, or local permit. Compliance with this AOC shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

65. Issuance of this AOC shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek

penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment under the CWA or any other federal or state statute, regulation, or permit.

66. The EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this AOC and to enforce this AOC.

67. Nothing in this AOC is intended to nor shall be construed to operate in any way to resolve any potential criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this AOC.

68. This AOC applies to and is binding upon Respondents and their agents, successors, and assigns.

69. Any change in the legal status of Respondents, including but not limited to any transfer of assets of real or personal property, shall not alter Respondents' responsibilities under this AOC.

70. Respondents admit to the jurisdictional allegations set forth within this AOC, but do not admit wrongdoing or liability.

71. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondents may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to any right of judicial review of the AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

72. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this AOC.

73. Pursuant to Section 309(a)(4) of the CWA, 33 U.S.C. § 1319(a)(4), the EPA has sent a copy of this AOC to the State of Tennessee.

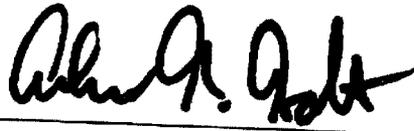
74. Each undersigned representative of the parties to this AOC certifies that he or she is fully authorized to enter into the terms and conditions of this AOC and to execute and legally bind that party to it.

#### **VI. Effective Date**

75. This AOC shall become effective upon receipt by Respondents' counsel of a copy of the fully executed AOC.

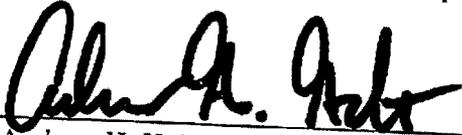
AGREED AND CONSENTED TO:

For RESPONDENTS:



Andrew H. Holt, in his individual capacity

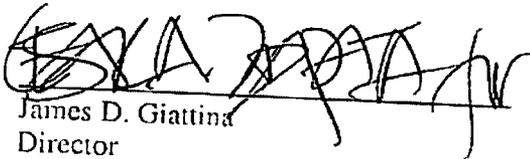
Date: 3/11/16



Andrew H. Holt, d/b/a A & E Livestock

Date: 3/11/16

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:



James D. Giattina  
Director  
Water Protection Division  
U.S. Environmental Protection Agency  
Region 4

Date: 3/17/16

**BLANK PAGE**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE THE ADMINISTRATOR

In the Matter of: )
ANDREW H. HOLT, d/b/a ) Docket No. CWA-04-2015-4506
A& E LIVESTOCK, )
Respondent. )

ORDER GRANTING MOTION TO WITHDRAW COMPLAINT WITHOUT PREJUDICE

This matter was initiated on August 13, 2015 by an Administrative Complaint filed by the Director, Water Protection Division of the Environmental Protection Agency, Region 4 (Complainant). An Amended Administrative Complaint was filed on October 2, 2015. On or about September 16, 2015, an Answer was filed to the Complaint by all Respondents, through counsel. Thereafter, upon Motion filed, Respondent Eleanor F. Holt was dismissed from the action by Order dated January 14, 2016. The parties actively engaged in this Tribunal's Alternative Dispute Resolution Process. Now pending is the Complainant's Motion to Withdraw Complaint Without Prejudice filed on March 24, 2016 ("Motion"). Complainant's stated basis for the withdrawal is that, after initiating this action, and agreeing to a settlement in principle with a monetary penalty, which was never finalized, the Complainant obtained certain new information regarding Respondent's improper closure of two lagoons at his facility. In response, the parties entered into an Administrative Compliance Order on Consent ("AOC") regarding the closure of the lagoons on March 11, 2016. Based upon this, "the parties believe it is appropriate at this juncture to allow the Agency to withdraw its Complaint without prejudice." Motion at 4. Complainant indicates in its Motion that in the event Respondent fails to comply with the AOC, it will seek compliance and other relief in a civil judicial forum. Motion at 5. The Motion further states that the Complainant has conferred with Respondent, who has reviewed the Motion and has no opposition thereto, and that "the parties stipulate that Respondent will not suffer plain legal prejudice as a result of Complainant's withdrawal of the Complaint." Motion at 6.

Rule 22.14(d) of the Consolidated Rules of Practice provides as follows:

(d) Withdrawal of the complaint. . . . after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice only upon motion granted by the Presiding Officer.

40 C.F.R. § 22.14(d).

For the reasons set forth in Complainant's unopposed Motion, the Motion to Withdraw Complaint Without Prejudice is hereby **GRANTED**, and Amended Administrative Complaint filed in this action is deemed withdrawn, *without prejudice*. Each party shall bear their own costs.



---

Susan L. Biro  
Chief Administrative Law Judge

Dated: March 25, 2016  
Washington, D.C.

In the Matter of Andrew H. Holt, d/b.a A & E Livestock Respondent  
Docket No. CWA-04-2015-4506

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Granting Motion To Withdraw Complaint Without Prejudice**, issued by Chief Administrative Law Judge Susan L. Biro dated March 25, 2016, was served this day in the following manner to the addressees listed below:

---

Danielle L. Pope  
Paralegal

Original And One Copy To:

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900R  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-2001

Copy By Regular Mail And E-Mail To:

Suzanne K. Armor, Esquire  
Associate Regional Counsel  
U.S. EPA, Region VII  
Sam Num Atlanta Federal Center  
Atlanta, GA 30303-8960  
armor.suzanne@epa.gov

John M Miles, Esquire  
Law Office and Mediation Center of John M. Miles  
511 South Third Street, P.O. Box 8  
Union City, TN 38281  
Mileslaw@johnmmiles.com

Dated: March 25, 2016  
Washington, DC